



## In the Interest of J.L.B., a Child

2021 | Cited 0 times | Court of Appeals of Texas | December 15, 2021

In The Court of Appeals Seventh District of Texas at Amarillo

No. 07-21-00143-CV

IN THE INTEREST OF J.L.B., A CHILD

On Appeal from the County Court at Law No. 1 Randall County, Texas Trial Court No. 69,035-L1,  
Honorable James W. Anderson, Judge Presiding

December 15, 2021

### MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

In this accelerated appeal, appellants, Mother and Father, appeal the judgment of the trial court terminating their parental rights to J.L.B. 1 The appellee is the Texas Department of Family and Protective Services. Mother challenges the sufficiency of the that termination is in the best interest of the child. Appointed counsel for Father has filed

1 To protect the privacy of the parties involved, we refer to the mother of the child the and the child by her initials. See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b). an Anders 2 brief in support of a motion to withdraw. We affirm the judgment of the trial

court as to Mother and Father.

### Background

The child the subject of this appeal is J.L.B. J.L.B. was born on February 3, 2015.

In October of 2015, the Department became involved with Mother, Father, and



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J.L.B. due to allegations of neglectful supervision, domestic violence, and methamphetamine use after Mother left J.L.B. in the care of B.G., the maternal grandmother. Mother blamed B.G. for the involvement and raised concerns about B.G. care of J.L.B. According to Mother, B.G. had a lengthy history of substance abuse and was not an appropriate caregiver for J.L.B. In March of 2017, Mother completed her plan of services and J.L.B. was returned to her care. As a part of the reunification plan, Mother was not to permit unsupervised contact between J.L.B. and B.G. or Father. residence. In 2018, Mother relapsed and began using methamphetamine again. She , was released from

In November of 2020, the Department opened an investigation after receiving a report alleging neglectful supervision of five-year-old J.L.B. by B.W. and J.W. The report also alleged concerns of drug use by Mother, B.W., and J.W. The report alleged that law

2 See *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). enforcement officers initiated a traffic stop after observing a vehicle with a defective

taillight ignoring traffic control signs near the Dallas/Fort Worth airport. The investigating officer noted that the driver, J.W., had bloodshot eyes and slurred speech. J.L.B. was lying unrestrained in the back seat of the vehicle at the time of the stop. B.W. was seated in the front passenger seat. After discovering methamphetamine and drug paraphernalia in the vehicle, J.W. and B.W. were arrested for possession of a controlled substance and child endangerment. At the time of her arrest, B.W. admitted she had a pipe in her purse



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and had used methamphetamine the day prior. Police officers found a baggie in the passenger-side door containing pills, methamphetamine, and two syringes. They also found a small bag of methamphetamine on the passenger floorboard. B.W. told the and that J.L.B. lived with B.W. due to drug use.

, B.W. told the investigator that she had possession of J.L.B. because Mother was using methamphetamine. The investigator attempted to locate Mother by using contact information from a prior CPS case, but she was unsuccessful. The investigator located Father in a federal penitentiary and he remained there throughout the pendency of this proceeding.

The Department filed its petition seeking a modification 3 of conservatorship and termination of parental rights. Following an adversary hearing, the Department was appointed temporary managing conservator and J.L.B. was placed with a foster family in 3 This order was entered as a result of Amarillo.

The associate judge conducted a bench trial through Zoom videoconferencing on June 14, 2021. 4 Although Mother and Father were each represented by counsel, neither appeared at the final hearing.

The caseworker testified that she spoke to Mother one time during the pendency of the case, on February 9, 2021. According to the caseworker, Mother did not want anything to do with the case. Mother told the caseworker that she was living in Oklahoma, , and she expected to be sentenced to prison



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for a significant amount of time. Mother declined to meet with the caseworker and declined to work the service plan prepared by the Department. Mother did not answer subsequent calls from the caseworker.

The Department produced evidence that Mother pled guilty in May of 2015 to a state jail felony offense of credit card or debit card abuse and was placed on a four-year deferred adjudication probation. As a part of her probation, Mother was to abstain from the use of illegal substances and refrain from committing another criminal offense. In complete a drug rehabilitation program at an Intermediate Sanction Facility (ISF). In March of 2021, an amended motion to proceed to adjudication was filed. That motion

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In response to the threat presented by the COVID-19 pandemic, the Texas Supreme Court issued numerous emergency orders authorizing anyone involved in any hearing to participate remotely, such as by videoconferencing. See TEX. GOV T CODE ANN. § 22.0035(b). One such order was effective as of the date of this hearing. and failing to comply with the terms and conditions of the drug court program.

The Department presented evidence that Mother has not had any contact or visitation with J.L.B. since J.L.B. was removed from the care of B.W. in November of 2020. The caseworker testified that Mother knew that B.W. had a history of drug usage. She further testified that it is in the best current methamphetamine use, is not able to provide J.L.B. with a safe and stable home, did not want to work any services, and is expected to be sentenced to prison.

The Department offered evidence that Father is incarcerated in Colorado and has not had any contact with J.L.B. for several years. A service plan was created for Father,



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but he did not complete any services. According to the caseworker, Father has a long date from prison is 2025. In 2018, Father had his parental rights to another child terminated on endangerment grounds. A certified copy of the termination order was admitted without objection.

J.L.B. is placed in a foster home in Amarillo. This is the same foster home placement that J.L.B. had in the 2015 case. The foster family maintained contact with Mother after the 2015 case concluded and babysat J.L.B. on occasion. Mother contacted the foster mother when J.L.B. was removed in the current case to see if J.L.B. could be placed with her. J.L.B. is doing well in this placement and feels safe there. J.L.B. related that she wants to have the same last name as her foster parents. She B.W. and J.W.

rights are terminated, the foster family plans to adopt J.L.B.

J.L.B. on the grounds of endangering conditions, endangerment, constructive abandonment, and failure to comply with a court order that established actions necessary to obtain return of the child. See TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (N), (O). 5 The trial court also found that termination was in the best interest of J.L.B. See § 161.001(b)(2). The trial court parental rights to another child based on endangering conditions or endangerment, constructive abandonment, and failure to comply with a court order that established actions necessary to obtain return of the child. See § 161.001(b)(1) (M), (N), (O). The trial court also found that termination was in the best interest of J.L.B. See § 161.001(b)(2).



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The Department was appointed the permanent managing conservator of J.L.B.

In July of 2021, the Honorable James W. a de novo hearing and considered the entire record from the prior hearing. In August of

2021, Judge Anderson affirmed the order of the associate judge.

Mother and Father timely appealed the resulting judgment.

### 5 Standard of Review

When reviewing the legal sufficiency of the evidence in a termination case, the

appellate court should look at all the evidence In re J.F.C., 96 S.W.3d 256, 266 (Tex. 2002). To

give appropriate deference factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do

so. Id. We disregard all evidence that a reasonable factfinder could have disbelieved or

found to have been not credible, but we do not disregard undisputed facts. Id. Even

evidence that does more than raise surmise or suspicion is not sufficient unless that

evidence can produce a firm belief or conviction that the allegation is true. In re K.M.L.,

443 S.W.3d 101, 113 (Tex. 2014). If, after conducting a legal sufficiency review, we

determine that no reasonable factfinder could have formed a firm belief or conviction that

the matter that must be proven was true, then the evidence is legally insufficient, and we

must reverse. Id. (citing In re J.F.C., 96 S.W.3d at 266).

In a factual sufficiency review, we must give due consideration to evidence that the

factfinder could reasonably have found to be clear and convincing. In re J.F.C., 96

S.W.3d at 266. We must determine whether the evidence is such that a factfinder could

Id. We must also consider whether disputed evidence is such that a reasonable factfinder



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could not have resolved the disputed evidence in favor of its finding. Id. If, considering the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient. Id.

### Applicable Law

#### Santosky

v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); see In re M.S., 115 S.W.3d 534, 547 (Tex. 2003). Consequently, we strictly scrutinize termination proceedings and strictly construe the involuntary termination statutes in favor of the parent. Holick v. Smith, oral

In re A.V., 113 S.W.3d 355, 361 (Tex. 2003)

(citing In re J.W.T., 872 S.W.2d 189, 195 (Tex. 1994)). Recognizing that a parent may forfeit his or her parental rights by his or her acts or omissions, the primary focus of a See id.

In a case to terminate parental rights under section 161.001 of the Family Code, the petitioner must establish, by clear and convincing evidence, that (1) the parent committed one or more of the enumerated acts or omissions justifying termination, and (2) termination is in the best interest of the child. § 161.001(b). Clear and convincing

§ 101.007; In re J.F.C., 96 S.W.3d at 264. Both elements must be established and

termination may not be based solely on the best interest of the child as determined by the trier of fact. , 727 S.W.2d 531, 533 (Tex. 1987); In re

K.C.B., 280 S.W.3d 888, 894 (Tex. App. Amar predicate finding under section 161.001[(b)](1) is



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necessary to support a judgment of

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re A.V., 113 S.W.3d at 362. We will affirm the termination order if the evidence is both legally and factually sufficient to support any alleged statutory ground the trial court relied upon in terminating the parental rights if the evidence also establishes that termination is best interest. In re K.C.B., 280 S.W.3d at 894-95.

The clear and convincing evidence standard does not mean the evidence must negate all reasonable doubt or that the evidence must be uncontroverted. In re R.D.S., 902 S.W.2d 714, 716 (Tex. App. Amarillo 1995, no writ). The reviewing court must recall that the trier of fact has the authority to weigh the evidence, draw reasonable inferences therefrom, and choose between conflicting inferences. Id. The factfinder also enjoys the right to resolve credibility issues and conflicts within the evidence and may freely choose to believe all, part, or none of the testimony espoused by any witness. Id. Where regarded as conclusive. In re B.R., 950 S.W.2d 113, 121 (Tex. App. El Paso 1997, no writ).

The appellate court cannot weigh witness credibility issues that depend on demeanor and appearance as the witnesses are not present. In re J.P.B., 180 S.W.3d 570, 573 (Tex. 2005). Even when credibility issues are reflected in the written transcript, are not themselves unreasonable. Id. A determination of best interest necessitates a focus on the child, not the parent.

In re B.C.S., 479 S.W.3d 918, 927 (Tex. App. El Paso 2015, no pet.). Appellate courts





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examine the entire record to decide what is in the best interest of the child. In re E.C.R., best interest to preserve the parent-child relationship. In re R.R., 209 S.W.3d 112, 116 (Tex. 2006).

by the non-exclusive list of factors in *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). These factors include: (1) the desires of the child, (2) the emotional and physical needs of the child now and in the future, (3) the emotional and physical danger to the child now and in the future, (4) the parental abilities of the individuals seeking custody, (5) the programs available to assist these individuals to promote the best interest of the child, (6) the plans for the child by these individuals or by the agency seeking custody, (7) the stability of the home or proposed placement, (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not proper, and (9) any excuse for the acts or omissions of the parent. *Id.* the evidence were

In re C.T.E.,

95 S.W.3d 462, 466 (Tex. App. Houston [1st Dist.] 2002, pet. denied) (quoting In re C.H., 89 S.W.3d 17, 27 (Tex. 2002)). Evidence that supports one or more statutory

grounds for termination may also constitute evidence illustrating that termination is in the

See In re E.C.R., 402 S.W.3d at 249. The best interest analysis may

consider circumstantial evidence, subjective factors, and the totality of the evidence as well as direct evidence. In re N.R.T., 338 S.W.3d 667, 677 (Tex. App. Amarillo 2011,

establishment of a stable, permanent home has been recognized as the paramount

consideration in determining best interest. See In re K.C., 219 S.W.3d 924, 931 (Tex.



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App. Dallas 2007, no pet.).

By her appeal, Mother raises two issues. In her first issue, she challenges the

sufficiency of the

evidence to support the predicate grounds for termination. Logic dictates that we address

Sufficiency of the Evidence Under Section 161.001(b)(1)(D) and (E)

In her second issue, Mother challenges the legal and factual sufficiency of the

evidence to support the termination of her parental rights under subsections

161.001(b)(1)(D), (E), (N), and (O). Ordinarily, only one statutory predicate ground is

best interest. In re A.V., 113 S.W.3d at 362. However, in light of the Texas Supreme

Court opinion in In re N.G., and (E), when raised on appeal because of the potential future consequences to

parental rights in a future proceeding concerning a different child. In re N.G., 577 S.W.3d

230, 235-37 (Tex. 2019) (per curiam). A trial court may order termination of a parent-child relationship if the court finds

by clear and convincing evidence that a parent has knowingly placed or knowingly

allowed a child to remain in conditions or surroundings which endanger the physical or

emotional well-being of the child and/or engaged in conduct or knowingly placed the

child with persons who engaged in conduct which endangers the physical or emotional

well-being of the child. See § 161.001(b)(1)(D), (E). Both subsections (D) and (E)

require proof of endangerment. injury or to jeopardize Boyd, 727 S.W.2d at

533. A child is endangered when the environment creates a potential for danger that

the parent is aware of but consciously disregards. Protective Servs., 511 S.W.3d 145, 159 (Tex. App. El



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Paso 2014, no pet.). Endanger

means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment, but it is not necessary that the conduct be directed at the child or that the child suffer injury. In re N.K., 399 S.W.3d 322, 330-31 (Tex. App. Amarillo 2013, no pet.).

While both subsections (D) and (E) focus on endangerment, they differ regarding the source of the physical or emotional endangerment to the child. See In re B.S.T., 977 S.W.2d 481, 484 (Tex. App. Houston [14th Dist.] 1998, no pet.). Subsection (D) requires a showing that the environment in which the child is placed endangered Servs., 16 S.W.3d 390, 394 (Tex. App. El Paso 2000, pet. denied). Conduct of a parent or another person in the home can create an environment that endangers the physical and emotional well-being of a child as required for termination under subsection (D). In re W.S., 899 S.W.2d 772, 776 (Tex. App. Fort Worth 1995, no pet.). Inappropriate, abusive, or unlabeled home or with whom the child is compelled to associate on a regular basis in his home

In re M.R.J.M., 280 S.W.3d 494, 502 (Tex. App. Fort Worth 2009, no pet.) (op. on -being

that similar conduct will recur if the child is returned to the parent. Id. Thus, subsection misconduct, which is the subject of subsection (E). Doyle, 16 S.W.3d at 394.

omission or failure to act. In re M.J.M.L., 31 S.W.3d 347, 350-51 (Tex. App. San Antonio 2000, pet. denied); Doyle, 16 S.W.3d at 395. To be relevant, the conduct does not have to have been directed at the child, nor must actual harm result to the child from the



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conduct. 907 S.W.2d 81, 84 (Tex.

App. Dallas 1995, no writ). Additionally, termination under subsection (E) must be based on more than a single act or omission; a voluntary, deliberate, and conscious course of conduct by the parent is required. In re E.P.C., 381 S.W.3d 670, 683 (Tex.

App. Fort Worth 2012, no pet.). -being need not

be established as an independent proposition but may be inferred from parental misconduct. In re B.C.S., 479 S.W.3d at 926. In re

J.O.A., 283 S.W.3d 336, 345 (Tex. 2009). Because the evidence pertaining to subsections 161.001(b)(1)(D) and (E) is interrelated, we may conduct a consolidated

review. In re M.R.J.M., 280 S.W.3d at 503.

The trial court heard evidence that Mother has a five-year history with the

Department due to her ongoing substance abuse and resulting incarcerations. In 2015,

Mother pled guilty to a state jail felony and was placed on

community supervision probation for four years. Within a few months of being placed on

community supervision, J.L.B. was removed from domestic violence in the home of Mother and Father. In January of 2016, Mother was

incarcerated in an ISF facility after she violated the terms of her probation.

After Mother regained possession of J.L.B. in 2017, she left J.L.B. in the care of

B.W. knowing that B.W. was a long-time drug abuser. Additionally, the trial court heard

testimony that Mother is facing significant prison time due to her continued use of

methamphetamine and a motion to adjudicate her felony offense was pending. ongoing drug abuse is conduct that subjects a child to a life of uncertainty and instability,



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which endangers the physical and emotional well-being of the child. See *In re A.B.*, 125 S.W.3d 769, 777 (Tex. App. Texarkana 2003, pet. denied).

criminal activity that exposes a parent to incarceration is relevant evidence tending to establish a course of conduct endangering the emotional and physical well-being of a

*In re E.L.*, No. 09-15-00306-CV, 2016 Tex. App. LEXIS 885, at \*16 (Tex. App. Beaumont Jan. 28, 2016, pet. denied) (mem. op.). A] in the care of a known drug user is relevant to the predicate acts or omissions outlined in

subsections (D) and (E). *In re J.J.*, No. 07-13-00117-CV, 2013 Tex. App. LEXIS 11194,

at \*12 (Tex. App. Amarillo Aug. 29, 2013, no pet.) (mem. op.). The evidence that a parent allowed a child to be around persons using drugs can support the conclusion that

s endanger her physical or emotional well-being under subsection

(D) and can qualify as a voluntary, deliberate, and conscious course of conduct

endangering -being under subsection (E). See *In re C.V.L.*, 591 S.W.3d

734, 751 (Tex. App. Dallas 2019, pet. denied).

Having examined the entire record, we find that the trial court could reasonably

form a firm belief or conviction that Mother knowingly placed or knowingly allowed J.L.B.

to remain in conditions or surroundings which endangered her physical or emotional well-

being and engaged in conduct which endangered J.L.B. nd physical well-

finding. We overrule issue two.

s on subsections (D) and

(E), we need not address the findings under subsections (N) and (O). *In re A.V.*, 113

S.W.3d at 362.



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### Best Interest

In her remaining issue, Mother challenges the factual and legal sufficiency of the evidence to support the best interest finding made under section 161.001(b)(2).

The trial court was allowed to consider evidence in support of the predicate grounds in making the best interest determination. See *In re E.C.R.*, 402 S.W.3d at 249.

That evidence established that Mother has a history with the Department since 2015, a substance abuse problem due to her use of methamphetamine, a criminal history including credit card abuse, violation of her community supervision resulting in incarceration, and leaving J.L.B. in the custody of B.W., a longtime drug abuser. The statutory grounds for termination are significant in our review of the best interest finding.

The court also heard evidence from which it could have concluded that Mother was largely disinterested in J.L.B. The caseworker testified that she offered Mother a family plan of service and visitation with J.L.B., but Mother refused any involvement in the case. programs that the parent did not have the ability to motivate herself in the future. In re S.P., 509 S.W.3d 552, 558 (Tex. App. El Paso 2016, no pet.). A trial court is permitted determination. In re S.B., 207 S.W.3d 877, 887-88 (Tex. App. Fort Worth 2006, no pet.).

This evidence weighs heavily in favor of the best interest finding.

Stability and permanence are paramount in the upbringing of children. In re J.D., 436 S.W.3d 105, 120 (Tex. App. Houston [14th Dist.] 2014, no pet.). The factfinder may determine whether the plans and expectations of each party are realistic or weak and ill-defined. *Id.* at 119-20.



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Mother did not testify at the termination hearing or offer any specifics of her plans for J.L.B. The record does not indicate that Mother had any bond with J.L.B. The Department caseworker testified that Mother refused to engage in any services and has had no recent contact with the Department. Further, Mother admitted to the caseworker she had violated her probation and was looking at significant jail time. Conversely, the foster family is providing a drug-free environment and the stability, structure, security, and consistency that J.L.B. needs. The evidence shows that J.L.B. is strongly bonded with her foster family and she wants to have their last name. This is the same foster family that cared for J.L.B. when the Department was involved in 2015. J.L.B. is doing well in the home and the foster family plans to adopt J.L.B. According to the caseworker, J.L.B. is thriving in the home and she is well cared for in this placement. When children are too young to express their desires, the factfinder may consider whether the children have bonded with the foster family, are well-cared for by them, and have spent minimal time with a parent. In re S.R., 452 S.W.3d 351, 369 (Tex. App. Houston [14th Dist.] 2014, pet. denied).

J.L.B.

for J.L.B. and weighs heavily in favor of the trial court parental rights is in the best interest of J.L.B. We conclude the evidence is legally and factually sufficient to establish a firm ghts is in the best interest of J.L.B. ssue challenging the best interest determination.

Pursuant to Anders -appointed appellate counsel has filed a brief



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certifying that he has diligently searched the record and has concluded that the record reflects no arguably reversible error that would support an appeal. In re L.J., No. 07-14-00319-CV, 2015 Tex. App. LEXIS 427, at \*2-3 (Tex. App. Amarillo Jan. 15, 2015, no pet.) (mem. op.); In re Schulman, 252 S.W.3d 403, 406 n.9 (Tex. Crim. App. 2008) (orig. proceeding); , 105 S.W.3d 52, 56

(Tex. App. Co an indigent client in a parental termination appeal and concludes that there are no non-

frivolous issues for appeal, counsel may file an Anders-type

Counsel certifies that he has diligently researched the law applicable to the facts and issues and discusses why, in his professional opinion, the appeal is frivolous. In re D.A.S., 973 S.W.2d 296, 297 (Tex. 1998) (orig. proceeding). By his Anders brief, counsel concludes that reversible error is not present because Father had the benefit of appointed, effective counsel, and sufficient evidence supports termination under See In re A.V., 113 S.W.3d at 362;

In re T.N., 180 S.W.3d 376, 384 (Tex. App. Amarillo 2005, no pet.) (only one predicate finding under section 161.001(b)(1) is necessary to support termination when there is also requirements of Anders by providing a copy of the brief, motion to withdraw, and appellate record to Father, and notifying him of his right to file a pro se response if he desired to do so. Kelly v. State, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014); In re L.V., No. 07-15-00315-CV, 2015 Tex. App. LEXIS 11607, at \*2-3 (Tex. App. Amarillo Nov. 9, 2015) Anders brief.





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As in a criminal case, we have independently examined the entire record to determine whether there is a non-frivolous issue that might support the appeal. See *Penson v. Ohio*, 488 U.S. 75, 82-83, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). Our independent review supports termination under subsection (M). *In re A.C.*, 394 S.W.3d 633, 641 (Tex. App. Houston [1st. Dist.] 2012, no pet.). Based on this record, we conclude that a reasonable factfinder could have formed a firm belief or conviction that grounds for termination existed, and that termination of parental rights was in the best interest of J.L.B. See § 161.001(b)(1), (2). After reviewing the record and the Anders brief, we agree with counsel that there are no plausible grounds for reversal.

### Conclusion

issues and finding no plausible grounds for we affirm the judgment of the trial court terminating parental rights.

Judy C. Parker Justice

